



PRICE DANIEL
ATTORNEY GENERAL

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

May 11, 1949.

Hon. Ray Kirkpatrick, Chairman
House Appropriations Committee
51st Legislature
Austin, Texas

Opinion No. V-827.

Re: Constitutionality of proposed H. B. 42, 51st Legislature, approving action of Stephen F. Austin State Teachers College in exercising option to buy certain real property, and making appropriation therefor.

Dear Mr. Kirkpatrick:

On behalf of the House Appropriations Committee, you have submitted a copy of proposed House Bill No. 42, an Act approving the action of the governing board of Stephen F. Austin State Teachers College in exercising its option to buy certain real property, known as the Muckleroy Farm, for the development of the college department of forestry and agriculture, and making an appropriation of \$25,000.00 for the purchase thereof. Your submitted question: Is said bill constitutional?

Article 2645, V.C.S., requires that "agriculture shall be taught in each of the State Teachers' Colleges." Under subsection 3 of Article 2647, the governing board of teachers colleges may determine what subjects of study shall be pursued, but shall not change any department of instruction provided by law.

Subsection 9 of Article 2647 provides as follows:

"Power and authority is hereby conferred upon said board of regents to acquire by purchase or condemnation for the use and benefit of any of the State Teachers' Colleges, such

lands within the counties where such schools may be located, as said board may deem expedient for the use of any of said schools for purposes necessary in the conduct thereof."

The special fund established by the College Building Amendment (Tex. Const. Art. VII, Sec. 17) is created "for the purpose of acquiring, constructing and initially equipping buildings or other permanent improvements at the designated institutions of higher learning." Stephen F. Austin State Teachers College is one of the institutions designated. The Amendment also provides that colleges which participate in such fund "shall not thereafter receive any other state funds for the acquiring or constructing of buildings or other permanent improvements for which said Five (5¢) Cents ad valorem tax is herein provided, except in case of fire, flood, storm or earthquake occurring at any such institution. . . ."

The express purpose, clear and unambiguous, of Section 17 of Article VII is to provide for the acquiring, constructing and initially equipping of buildings or other permanent improvements, at the designated colleges. The Legislature is not precluded by its provisions from making appropriations for the purchase and acquisition of additional land for the designated institutions, nor is it so precluded by any other law, statutory or constitutional, of which we are apprised. The Amendment specifically prohibits appropriations of other State funds for the purposes covered therein. It does not prohibit appropriations for additional land. In our opinion, the phrase "or other permanent improvements" found in Section 17 may not properly be construed to mean or include land; such a construction would be strained and unwarranted, violative of accepted rules of construction.

"Land" in the usual and legal sense is not treated as an improvement. Land "legally includes all . . . houses, and other buildings, for they consist of two things--land, which is the foundation, and the structure thereupon." Fidelity Cotton Oil & Fertilizer Co. v. Martin, 136 S.W. 533; McGee Irrigating Ditch Co. v. Hudson, 22 S.W. 967; Reynard v. City of Caldwell, 42 P.2d 292, 296; 24 Words & Phrases, (Perm. Ed.) 134-140. See also Articles 7146, 7319, V.C.S.

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Land, however, may be improved and enhanced in value by the addition of buildings, structures, fences, and other like improvements of a permanent character, affixed or situated on the soil, which, when they are added, will be recognized as a part of the land. 32 Words & Phrases, (Perm. Ed.) 113-116; Articles 7146, 7319. The term "permanent improvements" is concisely defined in Pritchard v. Williams, 106 S.E. 144 as follows:

"'Permanent improvements' to land include all improvements of a permanent nature which substantially enhance the value of the property and, property being a farm, includes . . . dwelling house, barns, and stables. . . fencing . . . wells . . . orchards . . . provided that they enhance the value of the property, but do not include repairs to buildings which should be made by the owner in the ordinary use of the property."

It is the acquisition of such permanent improvements as distinguished from the acquisition of additional land as improved which, we think, is contemplated in the Amendment, Section 17 of Article VII.

We are not advised, nor have we assumed, that there have been buildings or other permanent improvements placed or erected on said land by the owner at the suggestion of the college in order to greatly enhance its value prior to the contemplated purchase, and in order to acquire by indirection buildings or other permanent improvements with funds in violation of the provisions of Section 17 of Article VII.

We have not before us a situation where the college is desirous of purchasing land on which to build one of the buildings or other permanent improvements mentioned in the Constitution. That matter may be disposed of when it arises. We are assuming that the land in question is of a different character.

Accordingly, we advise that House Bill No. 42 is constitutional.

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SUMMARY

House Bill No. 42, proposed by the 51st Legislature, approving action of Stephen F. Austin State Teachers College in exercising option to buy certain real property and making an appropriation therefor, is constitutional. It does not violate Section 17 of Article VII, Constitution of Texas. Arts. 2645, 2647, subsection 3, V.C.S.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By *Chester E. Ollison*
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